

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

AMERICAN INTERSTATE INSURANCE
COMPANY OF GEORGIA

PLAINTIFF

V.

CAUSE NO. 1:93CV292-B-D

MAX WHITE d/b/a MAX WHITE
TRUCKING COMPANY, INC.

DEFENDANT

MEMORANDUM OPINION

This cause is presently before the court on the motion of American Interstate Insurance Company of Georgia ("American Interstate") for summary judgment. Upon consideration of the motion, the defendant's response thereto, and the memoranda submitted by the parties, the court is prepared to rule.

This is a declaratory judgment action brought by American Interstate seeking an adjudication and declaration of rights under its comprehensive general liability policy of insurance issued to Max White d/b/a Max White Trucking Company, Inc. ("White Trucking"). Jurisdiction is predicated on diversity. 28 U.S.C. § 1332.

FACTS

The underlying tort case arises from a motor vehicle collision on July 19, 1991 involving a truck driven by Herbert David Farris and a truck towing a trailer driven by an employee of White Trucking in the vicinity of the Natchez Trace Parkway overpass in Tupelo, Lee County, Mississippi. The trailer, carrying a knuckle boom loader apparatus, collided with the overpass of the Natchez Trace causing the subsequent collision of Farris's truck with the trailer. Farris sued White Trucking (formerly Max White Logging

Company) and others, claiming that White Trucking's employee was operating his vehicle in the course and scope of his employment with White Trucking, and that White Trucking is liable to Farris through vicarious liability, respondeat superior and other theories of imputed negligence.

American Interstate issued a comprehensive general liability policy of insurance (number 91GLMS102801) providing bodily injury liability and property damage liability insurance coverage to White Trucking for the period January 2, 1991 to January 2, 1992. The case was filed in the Northern District of Mississippi, Eastern Division, on September 19, 1991 (cause number 1:91CV259-S-D). That case has now settled. American Interstate provided White Trucking with a defense in that cause. The plaintiff has also indicated to the court that it is currently providing White Trucking a defense in a subrogation action brought by Scottish Lion Insurance Company involving the same automobile collision pending in the Circuit Court of Lee County, Mississippi (cause number 94-168-R-L).

The plaintiff filed the present action for declaratory judgment on October 1, 1993. American Interstate submits that it has no duty to defend or indemnify pursuant to a standard "auto exception" clause in its policy and has now moved for summary judgment.

STANDARD FOR SUMMARY JUDGMENT

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275

(1986) ("the burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be resolved in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986). The court here finds no factual dispute which would preclude a grant of summary judgment to the plaintiff.

DISCUSSION

It is a basic truism of common law that contracts, including insurance contracts, when clear and unambiguous, must be construed exactly as written. To this law, the court is bound. Lowery v.

Guaranty Bank and Trust Co., 592 So. 2d 79, 82 (Miss. 1991); Ford v. Lamar Life Ins. Co., 513 So. 2d 880, 886 (Miss. 1987); Griffin v. Maryland Cas. Co., 213 Miss. 624, 57 So. 2d 486, 489 (1952); Davenport v. St. Paul Fire and Marine Ins. Co., 978 F.2d 927, 930 (5th Cir. 1992) (Mississippi law) (where insurance contract is plain and unambiguous, it cannot be rewritten by the court); Foreman v. Continental Cas. Co. 770 F.2d 487 (5th Cir. 1985) (Mississippi law) (clear and unambiguous insurance contracts must be construed exactly as written). "The construction and effect of an insurance policy are matters of law to be decided by the court." Jones v. Southern Marine & Aviation Underwriters, Inc., 888 F.2d 358, 360 (5th Cir. 1989) (citations omitted), aff'g, 739 F. Supp. 315 (S.D. Miss 1988). "No rule of construction requires or permits the court to make a contract differing from that made by the parties themselves, or to enlarge an insurance company's obligations where the provisions of its policy are clear." Forman, 770 F.2d at 489 (quoting State Auto. Mut. Ins. Co. of Columbus, Ohio v. Glover, 176 So. 2d 256, 258 (Miss. 1965)).

With this in mind, the insurance policy in question is, in pertinent part, as follows:

I. COVERAGE A -- BODILY INJURY LIABILITY
 COVERAGE B -- PROPERTY DAMAGE LIABILITY
 The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of
 A. bodily injury or
 B. property damage
 to which this insurance applies, caused by an occurrence

 Exclusions
 This insurance does not apply:

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

(1) any automobile . . . owned or operated by . . . any insured, or

(2) any other automobile . . . operated by any person in the course of his employment by any insured[.]

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by . . . any insured[.]

The definitions section of the policy defines "automobile" as:

a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto).

The definitions section of the policy defines "mobile equipment" as:

a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than mix-in-transit type); graters, scrapers, rollers and other road construction equipment; air compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment[.]

In the instant cause, the defendant does not dispute the fact that the collision was an accident arising out of the ownership, maintenance, operation, and use of an automobile owned by White Trucking to transport mobile equipment. The defendant also admits

that the plaintiff's truck was an "automobile" and that the trailer attached to it was "mobile equipment" as defined by the policy.¹

Based on the language of the policy, it appears the parties intended to exclude from coverage the type of accident at issue in the underlying tort action. See American Interstate Ins. Co. of GA v. Smithie's Logging Co., No. 3:93CV609-Br-N (S.D. Miss. March 28, 1995) (interpreting same policy as excluding injuries related to automobile accidents). The language of the policy is clear and creates no doubt as to American Interstate's obligations to the defendant. Those obligations were not triggered by the accident that was the subject of this litigation. Thus, the court finds no duty to indemnify as there was no coverage provided under the express terms of subsections I(b)(2) and/or (d) of the policy.

The duty to defend, however, is not necessarily co-extensive with the ultimate liability under the policy. Universal Underwriters Ins. Co. v. American Motorist Ins. Co., 541 F. Supp. 755, 762 (N.D. Miss. 1982). "Under Mississippi law, an insurer's duty to defend an action against its insured is measured, in the

¹Worthy of note is the extent of the defendant's response to the motion for summary judgment. After admitting to all the facts outlined in the plaintiff's motion and itemization of facts, the defendant simply adds:

that the insurance policy speaks for itself and would ask the Court to review the insurance policy, the purposes for which the insurance policy was taken out, and render a decision based upon the actual interpretation of the insurance policy. . . . [T]here may be some questions as far as the purposes of the insurance, the reason the insurance was taken out, which could only be provided by testimony of insurance agents, defendants, and any other people involved in the said insurance contract.

first instance, by the allegations in the plaintiff's pleadings, and only if the pleadings state facts which bring the injury within the coverage of the policy is the insured required to defend." E.E.O.C. v. Southern Pub. Co. Inc., 705 F. Supp. 1213, 1215 (S.D. Miss. 1988) (citations omitted), aff'd, 894 F.2d 785 (5th Cir. 1990). This duty depends on the liability potentially created by the allegations of the complaint. "[T]he insurer is obligated to defend regardless of its ultimate liability and regardless of the fact that the suit may be groundless, false, or fraudulent. Conversely, where a complaint alleges facts which fall within a policy exclusion, the insurer is not obligated to defend unless it later learns or is apprised of facts which indicate coverage." Meng v. Bituminous Cas. Corp., 626 F. Supp. 1237, 1240-41 (S.D. Miss. 1986). Clearly, the occurrence here falls squarely within the exclusions applicable through subsections I(b) and (d) of American Interstate's general liability insurance policy. All of the allegations in the complaint that relate to White Trucking center around the negligence in the operation, maintenance, use and loading of the truck and trailer. Therefore, the complaint alleges no theory of liability that would cause the duty to defend to arise.

Once the moving party has properly supported its motion for summary judgment, the nonmoving party may not rest upon mere allegations or denials, but must set forth specific facts showing a genuine issue for trial, relying upon the types of evidentiary materials contemplated by Federal Rule of Civil Procedure 56.

Celotex Corp., 477 U.S. at 324. Taking the evidence in the light most favorable to the defendant, the court finds that there is no genuine issue of fact present, and there are no underlying facts in dispute that would prevent application of the exclusion as interpreted by the court. As a result, no coverage is provided under the policy for any of the claims against White Trucking encompassing the underlying tort action. Since the underlying complaint does not exceed the bounds of the exclusion, the court also finds that there is no duty to defend. See Jones, 739 F. Supp. at 324.

CONCLUSION

For the foregoing reasons, the plaintiff's motion for summary judgment will be granted. An order in accordance with this memorandum opinion will issue.

THIS, the ____ day of August, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE